



8011-01

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80258; File No. SR-NYSEArca-2017-28]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services

March 16, 2017

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on March 13, 2017, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (“Fee Schedule”). The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to adopt the Exchange Traded Fund Liquidity Provider Program pursuant to which the Exchange will adopt an incremental per share credit payable to ETP Holders and Market Makers (collectively, the “ELPs”) that provide displayed liquidity to the NYSE Arca Book in NYSE Arca-listed Tape B Securities (“ELP Program”).

As proposed, the Exchange would provide an incremental credit of \$0.0001 per share for providing displayed liquidity that result in an execution to ELPs that meet prescribed quoting standards in NYSE-Arca listed Tape B securities that have a consolidated average daily volume (“CADV”) in the previous month of less than 250,000 shares (“ELP Securities”).⁴ Under the proposal, an ELP must quote at the National Best Bid or Offer (“NBBO”) for at least an average of 15% of the time for the billing month in at least 50 ELP Securities for each billing month (“Quoting Standard”).⁵ If the ELP meets the Quoting Standard, the Exchange would provide the

⁴ NYSE-Arca listed Tape B securities that did not trade in prior month would be assigned a CADV of 0 and would be included as an ELP Security in the current billing month.

⁵ An ELP would meet the Quoting Standard if the average of the percentage of time during

ELP with the stated incremental credit in their Tape B executions that add liquidity. ELP Securities in which the ELP is registered as a Lead Market Maker (“LMM”)⁶ are excluded from the minimum 50 ELP Securities that an ELP must quote in to qualify for the proposed credit. ELPs are not required to quote in all ELP Securities.

The proposed incremental credit provided under the ELP Program is in addition to the ETP Holder and Market Maker’s Tiered or Basic Rate credit(s); provided, however, that such combined credit may not exceed \$0.0030 per share. For example, an ELP that qualifies for the ELP credit in a billing month and also qualifies for the Tape B Tier 2 credit of \$0.0028 per share will receive a combined credit of \$0.0029 for executions that add liquidity to the Book. However, an ELP that qualifies for the same ELP credit in the billing month and also qualifies for the Tape B Tier 1 credit of \$0.0030 per share will not receive the ELP credit in that billing month as such combined credit would exceed \$0.0030 per share. An ELP that qualifies for the ELP Program credit in a billing month that is also an LMM would not receive the ELP Program credit on the ELP’s LMM adding liquidity as that liquidity receives credits of \$0.0033 per share, \$0.0040 per share, and \$0.0045 per share. However, that ELP may receive the ELP Program credit on non-LMM adding liquidity so long as such combined credit does not exceed \$0.0030 per share.

regular trading hours during which the ELP maintains a quote at each of the NBB and NBO equals at least 15%. As an example, where the ELP maintains a quote for any number of shares at the NBB for 20% of the time during regular trading hours in at least 50 ELP Securities and maintains a quote for any number of shares at the NBO for 10% of the time during regular trading hours in the same ELP Securities, the ELP would be deemed to be at the NBBO for the required time period of 15% ((20% + 10%)/2).

⁶ The term “Lead Market Maker” is defined in Rule 1.1(ccc) to mean a registered Market Maker that is the exclusive Designated Market Maker in listings for which the Exchange is the primary market.

In addition to the percentage of time that an ELP must provide a quote at the NBBO in ELP Securities, the Exchange also proposes to adopt an additional requirement that an ELP displays a minimum number of shares of adding volume at or near the NBBO, except that this additional requirement would be applicable beginning May 1, 2017. As proposed, beginning May 1, 2017, in order for the ELP to qualify for the credit proposed herein, the ELP must, in at least 50 ELP Securities:

- Quote at the NBBO for at least an average of 15% of the time for the billing month, and ,
- Display at least 2,500 shares that are priced no more than 2% away from the NBBO at least 90% of the time for the billing month (“Quoting and Depth Standard”).

The Exchange would calculate each participating ELP’s Quoting Standard and Quoting and Depth Standard, as applicable, beginning each month on a daily basis, up to and including the last trading day of a calendar month, to determine at the end of each month whether the ELP is meeting the requirements of the ELP Program.

As proposed, ELPs may join the ELP Program on a rolling basis on any day of the month and the ELP’s obligations would begin on the first day that the ELP is enrolled in the ELP Program. Once an ELP is enrolled in the ELP Program, the ELP is enrolled in all ELP Securities and would be required to meet the Quoting Standard (for March 2017 and April 2017) and the Quoting and Depth Standard (for May 2017 and each month thereafter) in at least 50 ELP Securities for the billing month to be eligible for the proposed incremental credit. If an ELP is enrolled for the ELP Program after the first trading day of the month, the ELP’s requirement to qualify for the proposed incremental credit would be measured from the day the ELP is enrolled

and if the ELP meets the requirements of the ELP Program, the proposed credit would be applied to those ELP executions that add displayed liquidity from the day the ELP is enrolled. As an example, suppose that an ELP enrolls in the ELP Program on March 15, 2017. The ELP would be required to meet the requirements of the ELP Program for the billing month, from March 15, 2017 through the end of the month, March 31, 2017, and if the ELP quotes an average of at least 15% in at least 50 ELP Securities for that period from March 15, 2017 through March 31, 2017, the ELP will receive the proposed additional ELP credit, subject to the combined credit limit of \$0.0030 per share.

Under the proposal, each participating ELP must provide a unique Equity Trading Permit ID (“ETPID”) that the ELP would use for all ELP Securities. Since ETP Holders are often assigned multiple ETPIDs on NYSE Arca, an ELP would be required to use a unique ETPID for all ELP Securities.

As proposed, the ELP Program is a voluntary program. An ETP Holder or Market Maker that wishes to participate in the ELP Program would be required to complete an enrollment form and submit it to the Exchange via electronic mail to participate as an ELP.

With this proposed rule change, the Exchange hopes to provide incentives for increased trading in ELP Securities for market participants. The proposed rule change is intended to provide incentives for quoting and to add competition to the existing group of liquidity providers in ELP Securities. The Exchange believes the proposed rule change will strengthen market quality in ELP Securities. By establishing the ELP Program, the Exchange is rewarding liquidity providers who improve displayed liquidity and the size of such liquidity in the market. The Exchange believes that the ELP Program will encourage the additional utilization of, and

interaction with, the Exchange and provide customers with the premier venue for price discovery, liquidity, competitive quotes and price improvement.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that ETP Holders would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Sections 6(b)(4) of the Act,⁸ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange further believes that the proposed rule change is also consistent with Section 6(b)(5) of the Act,⁹ in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change would encourage increased participation by ELPs in the trading of ETP Securities. The Exchange also believes that the proposed rule change would encourage the submission of additional liquidity to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for all market participants on the Exchange.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78f(b)(5).

The Exchange believes the proposed ELP Program will provide an incentive for ELPs to quote and trade a greater number of securities on the Exchange and will generally allow the Exchange and ELPs to better compete for order flow and thus enhance competition. Further, the ELP program is intended to provide ELPs with an incentive to increase displayed quoting on NYSE Arca and thereby provide liquidity and better quoting that supports the quality of price discovery and promotes market transparency. The Exchange also believes that the proposed incremental credit for ELPs that meet the requirements of the ELP Program is equitable and not unfairly discriminatory because it would apply uniformly to all ELPs.

The Exchange believes allocating pricing benefits to ELPs that commit to meet the requirements of the ELP Program will provide a better trading environment for investors in ELP Securities, and encourage greater competition between listing venues for ELP Securities. The Exchange also believes that the proposal will promote tighter spreads and deeper liquidity for all market participants by requiring ELPs to meet the requirements of the ELP Program.

As proposed, the ELP Program is designed to enhance the Exchange's competitiveness as a listing venue and to strengthen its market quality for NYSE Arca-listed securities. The Exchange believes that the proposed change would increase competition with its competitors by incenting ETP Holders to volunteer for the ELP Program, which will enhance the quality of quoting in NYSE Arca-listed securities.

The Exchange believes that adopting only the Quoting Standard for March 2017 and April 2017 is reasonable because it may allow a greater number of ELPs to qualify for the proposed credit while also providing ELPs the opportunity to gradually increase their activity in order to qualify for the proposed credit. The Exchange believes that adopting the Quoting

Standard for March 2017 and April 2017 is also equitable and not unfairly discriminatory because the Quoting Standard would apply uniformly to all ELPs that enroll in the ELP Program.

The Exchange believes that adopting the Quoting and Depth Standard beginning May 2017 is also reasonable because the additional requirement would ensure that liquidity displayed on the Exchange by ELPs is available for a greater period of time during the trading day to provide market participants an adequate opportunity to transact against such liquidity. The Exchange believes that adopting the Quoting and Depth Standard beginning May 2017 is also equitable and not unfairly discriminatory because the additional criteria would apply uniformly to all ELPs beginning May 2017.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition. For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,¹⁰ the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the proposed rule change would encourage the submission of additional liquidity to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for market participants on the Exchange. The Exchange believes that this could promote competition between the Exchange and other execution venues, including those that currently offer comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

¹⁰ 15 U.S.C. 78f(b)(8).

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. Further, the Exchange believes that the proposed changes as a whole will contribute to tighter spreads and additional liquidity on the Exchange in NYSE Arca-listed securities, which will, in turn, benefit competition due to the improvements to the overall market quality of the Exchange. For the reasons described above, the Exchange believes that this proposal promotes a competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹¹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹²

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing.¹³ Rule 19b-4(f)(6)(iii), however, permits the

¹¹ 15 U.S.C. 78s(b)(3)(a)(iii).

¹² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the pre-filing requirement.

¹³ 17 CFR 240.19b-4(f)(6)(iii).

Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.¹⁴

The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange asserts that the proposed rule change does not present any new, unique, or substantive issues and that the proposal is substantially similar to a program in place at Bats BZX Exchange, Inc.¹⁵ Based on the foregoing, the Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay so that the proposal may take effect upon filing.¹⁶ At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2017-28 on the subject line.

¹⁴ Id.

¹⁵ See Securities Exchange Act Release No. 77846 (May 17, 2016), 81 FR 32356 (May 23, 2016) (SR-BatsBZX-2016-018).

¹⁶ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission,
100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2017-28. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2017-28, and should be submitted on or before [INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Eduardo A. Aleman,
Assistant Secretary.

¹⁷ 17 CFR 200.30-3(a)(12).

[FR Doc. 2017-05605 Filed: 3/21/2017 8:45 am; Publication Date: 3/22/2017]